



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 23, 2002

Mr. Royce Poinsett
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 76711

OR2002-7360

Dear Mr. Poinsett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174124.

The Office of the Governor received a request for the following information:

any communication between Gov. Perry's office and representatives of Farmers Insurance from Jan. 1, 2002 to the present, including telephone calls, emails and letters. . . . [and] any communication between the governor's office and the Texas Department of Insurance or state attorney general's office regarding the state's action against Farmers Insurance, Farmers' reaction and settlement negotiations.

You state that the Governor's Office has released to the requestor portions of the requested information. You claim that portions of two documents, Exhibits B and D, are excepted from required public disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments of the Office of the Attorney General ("OAG"). *See* Gov't Code § 552.304 (permitting person's submission of comments to OAG during ruling process). The OAG asserts that the information at issue is excepted from disclosure based on sections 552.101 and 552.107(2).

Section 552.301(b) requires a governmental body to ask for an attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request. The Governor's Office received the request for information on September 30, 2002. This office received the Governor's Office's request for a decision on October 16, 2002. The Governor's Office did not provide this office evidence sufficient to establish that the request for a decision was deposited in the interagency mail within the statutory deadline. *See id.* § 552.308(b). Consequently, the Governor's Office failed to comply with section 552.301(a) of the Government Code. Accordingly, the information at issue is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). The applicability of sections 552.101 and 552.107(2) are compelling reasons to overcome the presumption of openness.

Section 552.107(2) of the Government Code excepts from required public disclosure information if "a court by order has prohibited disclosure of the information." The Governor's Office and the OAG urge that one of documents at issue, Exhibit B, is subject to a court order. A Travis County district court had entered a temporary restraining order prohibiting the release of this document in *Farmers Ins. Exch. and Fire Ins. Exch. v. Jose Montemayor & Tex. Dep't of Ins.*, No. GN203156 (353rd Dist. Ct., Travis County, Tex., Sept. 25, 2002). However, the temporary restraining order has expired, and the court has since entered an Order Granting Temporary Injunction in Part, Denying Temporary Injunction in Part and Unsealing Exhibits in *State of Tex. & the Tex. Comm'r of Ins. v. Farmers Group, Inc.*, No. GV202501, and *Farmers Ins. Exch. and Fire Ins. Exch. v. Jose Montemayor & Tex. Dep't of Ins.*, No. GN203156 (353rd Dist. Ct., Travis County, Tex., Oct. 28, 2002). In the temporary injunction, the court prohibited the disclosure of certain information, including the data in the columns entitled "Distribution of Business" in Farmers's Exhibit 2, the document at issue here. However, the court concluded that the remainder of Exhibit 2 does not contain trade secret information and may be disclosed. The court stayed its order for ten days from the date of the signing of the order. The court signed the order on October 28, 2002. The tenth day from the signing of the order is November 7, 2002. Farmers has not appealed the court's order. Consequently, we conclude that the Governor's Office must withhold the data in the columns entitled "Distribution of Business" in Exhibit B under section 552.107(2). The Governor's Office must release the remaining information in Exhibit B.

Turning to the second document, Exhibit D, the OAG states that this document has been released to the public in a redacted form. The OAG asserts that portions of Exhibit D are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 17.61(f) of the Business and Commerce Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 17.61(f) of the Business and Commerce Code provides:

(f) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the persons who produced the material. The consumer protection division shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or any duly authorized representative of that person.

This provision requires the OAG to withhold from required public disclosure all documentary material the consumer protection division obtained pursuant to a Civil Investigative Demand ("CID") as well as other information that reveals information produced in response to a CID. The second document contains information that reveals information produced in response to a CID and which is consequently confidential under section 17.61(f). The OAG transferred this information to the Governor's Office. Information may be transferred between governmental agencies which are subject to the Public Information Act without destroying the confidential nature of the information on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies so as to effectively carry out the business of the state. *See Open Records Decision Nos. 655 (1997), 650 (1996).* The interagency transfer doctrine serves to preserve the confidentiality of the transferred information. *See Open Records Decision No. 650 (1996).* Therefore, the Governor's Office must withhold the information we have marked based on section 552.101.

The OAG also raises section 5(a) of article 1.10D of the Insurance Code for information in the second document. Section 5(a) reads as follows:

Any information or material acquired by the department that is relevant to an inquiry by the insurance fraud unit is not a public record for as long as the commissioner considers reasonably necessary to complete the investigation, protect the person under investigation from unwarranted injury, or serve the public interest. The information or material is not subject to a subpoena by another governmental entity, except a valid grand jury subpoena, until released for public inspection by the commissioner or, after notice and a hearing, a district court determines that the public interest and any

investigation by the commissioner would not be jeopardized by obeying the subpoena.

This provision grants the Commissioner of Insurance (the "Commissioner") the discretion to keep confidential certain information or material that is relevant to an inquiry by the Insurance Fraud Unit. *See* Open Records Decision No. 608 (1992). The OAG has submitted to this office a letter from the Texas Department of Insurance ("TDI") in which Associate Commissioner John Watson determined that the OAG should keep confidential the document to complete the investigation, protect the person under investigation from unwarranted injury, and serve the public interest. We note that the information was transferred to TDI's insurance fraud unit. After review of the information and in consideration of TDI's representations, we find that the information at issue was acquired by TDI and is relevant to an insurance fraud inquiry. We therefore find that, because the Commissioner has determined that the information must remain confidential at this time, the Governor's Office must withhold the information based on section 552.101 in conjunction with section 5(a) of article 1.10D.

In summary, based on section 552.107(2), the Governor's Office must withhold the marked confidential information in Exhibit B. Based on section 552.101 in conjunction with statutory law, the Governor's Office must withhold the marked confidential information in Exhibit D. The Governor's Office must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 174124

Enc: Submitted documents

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